1		BELLSOUTH TELECOMMUNICATIONS, INC.
2		DIRECT TESTIMONY OF KATHY K. BLAKE
3		BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
4		DOCKET NO. 2004-78-C
5 6		MAY 6, 2004
7	Q.	PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8		TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9		BUSINESS ADDRESS.
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11	A.	My name is Kathy K. Blake. I am employed by BellSouth as Director - Policy
12		Implementation for the nine-state BellSouth region. My business address is
13		675 West Peachtree Street, Atlanta, Georgia 30375.
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15	Q.	PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16		AND EXPERIENCE.
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18	A.	I graduated from Florida State University in 1981, with a Bachelor of Science
19		degree in Business Management. After graduation, I began employment with
20		Southern Bell as a Supervisor in the Customer Services Organization in
21		Miami, Florida. In 1982, I moved to Atlanta where I have held various
22		positions involving Staff Support, Product Management, Negotiations, and
23		Market Management within the BellSouth Customer Services and
24		Interconnection Services Organizations. In 1997, I moved into the State
25		Regulatory Organization where my responsibilities included issues

1 management and policy witness support. I assumed my current responsibilities 2 in July 2003. 3 4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY? 5 6 A. The purpose of my testimony is to present BellSouth's position on certain 7 unresolved issues in this arbitration proceeding between BellSouth 8 Telecommunications, Inc. ("BellSouth") and US LEC of South Carolina, Inc. 9 ("US LEC") and to explain why the Public Service Commission of South 10 Carolina ("Commission") should rule in BellSouth's favor on these issues. On 11 October 8, 2003, US LEC requested an amendment to its prior Interconnection 12 Agreement to implement the FCC's Triennial Review Order ("TRO"). The 13 parties have agreed that October 8, 2003 started the timeline for the arbitration 14 window. BellSouth and US LEC resolved many of the issues raised during the 15 negotiations. US LEC's Petition filed March 16, 2004 contained 28 issues, all 16 related to Attachment 2 of the Interconnection Agreement. By the time 17 BellSouth filed its Response on April 12, 2004, there were 13 issues 18 remaining. BellSouth filed with its Response an Issues Matrix, containing a

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neutral wording of the issues to be decided by the Commission. Since April

12, the parties have resolved an additional five issues. My testimony addresses

Issues 1, 3, 6-8 and 19. BellSouth witness Ms. Kristen Rowe addresses Issues

1	Issue	A-1: What statutes, regulations or other laws, rules and regulations govern
2		BellSouth's obligation to provide unbundled network elements under this
3		Agreement? (Section 1.1)
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5	Q.	WHAT IS YOUR UNDERSTANDING OF THE DISPUTE THAT THIS
6		ISSUE ADDRESSES?
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8	A.	BellSouth's understanding of this dispute is that US LEC is attempting to
9		expand the scope of this new Agreement beyond those obligations set forth in
10		Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act"). It is
11		BellSouth's understanding that US LEC is attempting to include additional
12		obligations which BellSouth may have pursuant to Section 271 of the Act in
13		the new Agreement in addition to other state requirements that have no basis in
14		the Act. Only matters addressed in Sections 251 and 252 of the Act can be
15		required to be incorporated into an interconnection agreement. Thus, Section
16		271 obligations, or any other unbundling requirements outside of Sections 251
17		and 252, should not be made a part of the new Agreement.
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19	Q.	WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
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21	A.	It is BellSouth's position that this Agreement is an interconnection agreement
22		that is governed by the terms of Sections 251 and 252 of the Act. In arbitrating
23		these disputes, therefore, the Commission is acting under the authority
24		delegated to it by Section 252 of the Act. Consequently, the new Agreement
25		should not include any rights and obligations that arise from any independent

1		state authority, except to the extent such state authority is not inconsistent with
2		the authority that has been delegated to the state commission by the Act.
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4	Q.	US LEC WITNESS MS. MONTANO STATES, AT PAGE 8 OF HER
5		DIRECT TESTIMONY, THAT "US LEC WANTS TO RESERVE ITS
6		RIGHTS TO REQUEST THIS COMMISSION IMPOSE ADDITIONAL
7		UNBUNDLING REQUIREMENTS SO THAT CERTAIN UNES OR
8		COMBINATIONS OF UNES REMAIN UNBUNDLED FOR PURPOSES OF
9		ATTACHMENT 2 OF THE PARTIES' INTERCONNECTION
10		AGREEMENT." PLEASE RESPOND TO US LEC'S POSITION.
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12	A.	BellSouth does not object to referencing Section 252 in the new Agreement to
13		the extent the reference clearly addresses only the authority that has been
14		appropriately delegated to the states pursuant to Section 252. BellSouth
15		simply objects to US LEC trying to expand the provisions of the Act beyond
16		the law. Certainly, nothing in Section 252 can be read to allow a state
17		commission to include obligations outside of Sections 251 and 252 of the Act
18		in an interconnection agreement.
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20	Q.	ON PAGES 8-9 OF HER DIRECT TESTIMONY, MS. MONTANO GIVES
21		AN EXAMPLE OF A SITUATION IN WHICH THIS COMMISSION
22		WOULD HAVE AUTHORITY UNDER SECTION 252 TO FIND
23		IMPAIRMENT FOR A SPECIFIC UNE, AND REQUIRE CONTINUED
24		PROVISION OF SUCH UNE. EVEN THOUGH THAT FLEMENT MAY

NO LONGER BE REQUIRED TO BE UNBUNDLED NATIONALLY.

1		PLEASE COMMENT.
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3	A.	BellSouth acknowledges that, to the extent authority is delegated to the state
4		commission, and to the extent that the state requirements are consistent with
5		the Act and federal rules, this Commission has authority under Section 252 to
6		impose unbundling obligations. BellSouth's objection is to the inclusion in the
7		Agreement of requirements pursuant to state rules or laws which go beyond
8		Sections 251 and 252 of the Act.
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10		In the Act, Congress expressly assigned the responsibility of making
11		impairment determinations (which, in turn, determine whether a given element
12		is required to be offered on an unbundled basis) to the FCC. In the recent
13		D.C. Circuit Court Order remanding in part and vacating in part the FCC's
14		Triennial Review Order, the D.C. Circuit unanimously found that the FCC is
15		not permitted to delegate this responsibility to the states. Id. at 14.
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17		Further, the preemption standard in Section 251(d)(3) of the 1996 Act bars a
18		state unbundling requirement that "thwarts or frustrates the federal regime"
19		TRO at ¶ 192. Although the FCC did not determine that additional state
20		unbundling requirements were unlawful per se and did not preempt any

If a decision pursuant to state law were to require the

specific state requirements, the FCC made clear that:

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Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978 (2003) ("Triennial Review Order" or "TRO"), reversed in part and vacated in part, United States Telecom. Ass'n v. FCC, Nos. 00-1012, et al (D.C. Cir. Mar. 2, 2004) ("USTA II").

unbundling of a network element for which the [FCC] has either found no impairment – and thus has found that unbundling that element would conflict with the limits in Section 251(d)(2) – or otherwise declined to require unbundling on a national basis, we believe it unlikely that such decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of Section 251(d)(3)(C). Similarly, we recognize that in at least some instances existing state requirements will not be consistent with our new framework and may frustrate its implementation. It will be necessary in those instances for the subject states to amend their rules and to alter their decisions to conform to our rules. Id. ¶ 195 (emphasis added).

Thus, to the extent US LEC suggests that this Commission go beyond existing FCC rules (that currently are in effect at least for the time being) and require BellSouth to provide an option for a UNE, say unbundled switching, in circumstances where the FCC has determined that such unbundling should not be required, such a position is tantamount to suggesting that the Commission impermissibly "thwart" and "frustrate" federal law in violation of the Act. Therefore, US LEC's language attempting to expand the scope of the Interconnection Agreement beyond the obligations of Section 251 and 252 should be rejected.

1	Issu	e A-3: What charges may BellSouth charge for the conversion of wholesale
2		services to Network Elements or Network Elements to wholesale services?
3		(Sections 1.6, 1.7.2)
4	Issue	A-19: What rate should apply for currently combined unbundled network
5		elements for which there is no specific rate set forth in the new Agreement
6		for such currently combined unbundled network elements? (Section 5.4.1)
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8	Q.	AS AN INITIAL MATTER, PLEASE DESCRIBE WHAT YOU MEAN BY
9		"WHOLESALE SERVICES" AND WHY US LEC WOULD REQUEST TO
10		CONVERT WHOLESALE SERVICES TO UNBUNDLED NETWORK
11		ELEMENTS ("UNES").
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13	A.	In the context of this issue, the term "wholesale services" generally refers to
14		those premium services that BellSouth offers pursuant to its Special Access
15		tariff, such as BellSouth LightGate® Service and BellSouth SMARTRing®
16		Service that are available from the BellSouth Tariff FCC No. 1. As Mr.
17		Hoffman acknowledges, at lines 83-85 of his direct testimony, the pricing
18		structure of these wholesale special access services may differ from those of a
19		similar UNE or combination of UNEs. However, it is the pricing structure of
20		BellSouth's special access services that makes it possible for BellSouth to offer
21		shorter installation intervals than the interval provided for the similar UNE or
22		UNE combination.
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24		Given the benefit of this shorter installation interval, CLECs may find it
25		advantageous to order special access services and then, after these services are

installed, convert them to UNEs or combinations of UNEs at TELRIC-based prices (which are lower than the tariffed prices). US LEC even acknowledges that "if a UNE cannot be provisioned in a specific time to meet a customer's due date, US LEC may elect to cancel its UNE DS1 order and re-submit the order for a special access DS1 circuit." (Hoffman Direct at lines 186-188)

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Q. PLEASE DESCRIBE THE DISAGREEMENT REGARDING THESE
 ISSUES.

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10 A. The disagreement regarding these issues centers on the nonrecurring charges 11 that are applicable when US LEC requests that BellSouth convert wholesale 12 tariffed services (where such services are currently in place and providing 13 service to a particular location) to UNEs or combinations of UNEs. 14 to facilitate and process requests for conversions of wholesale tariffed services 15 to UNE services, US LEC would submit a Local Service Request ("LSR") or a 16 spreadsheet, depending on the quantities involved. As I will discuss more fully 17 later in my testimony, US LEC contends that BellSouth is precluded from 18 assessing any charges to US LEC for such requests.

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Q. PLEASE DISCUSS THE CHARGES BELLSOUTH BELIEVES ARE
APPLICABLE WHEN US LEC CONVERTS FROM A WHOLESALE
TARIFFED SERVICE TO A UNE OR A COMBINATION OF UNES.

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A. The charges applicable for processing conversions of wholesale tariffed services to UNE services include a non-recurring conversion charge (also

referred to as a "switch-as-is" charge) and a service order charge. This Commission has previously approved both of these charges and has determined that these charges comply with Total Element Long Range Incremental Cost ("TELRIC").

In the BellSouth UNE cost proceeding before this Commission (Docket 2001-65-C), the Commission approved TELRIC-based recurring and non-recurring rates for the most common Currently Combined network elements that CLECs typically request. The rates set forth in Exhibit A of Attachment 2 reflect the recurring and non-recurring rates approved by this Commission that are applicable when US LEC orders Currently Combined network elements. If US LEC desires to provide service using Currently Combined network elements that are not uniquely set forth in Exhibit A of Attachment 2, BellSouth proposes that the recurring rate be the sum of the recurring rates for the individual elements that comprise the combination. As for the non-recurring rate for switching the existing service to a combination of UNEs, BellSouth proposes using the non-recurring ("switch-as-is") rate for a comparable combination.

Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERM "SWITCH-AS-IS".

A. The term "switch-as-is" is used to describe the process when a CLEC desires to use "Currently Combined" network elements to serve a customer that previously was served by BellSouth pursuant to a retail or wholesale tariff, by

1 a reseller, or by another CLEC. "Currently Combined" network element 2 combinations mean that such unbundled network elements requested by a 3 CLEC are in fact already combined by BellSouth in the BellSouth network to 4 telecommunications service to a particular location. The 5 telecommunications service that the CLEC is requesting that BellSouth provide 6 via a combination of UNEs would include those services being provided 7 pursuant to BellSouth's retail or wholesale tariffs.

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9 Q. HAS THE COMMISSION PREVIOUSLY APPROVED A "SWITCH-AS-IS" 10 CHARGE?

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12 A. Yes. The Commission approved a "switch-as-is" charge in its UNE Docket (Docket 2001-65-C) on November 30, 2001. This Commission-approved 13 14 charge is the one BellSouth has been charging and is appropriate for the 15 conversions discussed in US LEC's testimony.

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17 AT LINES 154-156 OF HIS DIRECT TESTIMONY, MR. HOFFMAN Q. CONTENDS THAT "BASED ON THE FCC RULE 51.316(c) AND THE 18 19 FCC'S DISCUSSION OF THE REASONING FOR SUCH RULE, US LEC 20 BELIEVES THAT BELLSOUTH NO LONGER HAS AUTHORITY TO 21 IMPOSE THE 'SWITCH-AS-IS' CHARGE UNLESS US LEC AGREES TO 22 SUCH ASSESSMENT." PLEASE RESPOND.

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24 US LEC's position appears to be based on its misinterpretation of the A. 25 applicable FCC Rule. FCC Rule 51.316(c) specifically restricts an ILEC like

BellSouth from assessing "any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements". However, this list of "restricted" charges that Mr. Hoffman attempts to rely upon to support his position does not include the Commission-approved "switch-as-is" nonrecurring charge that is applicable when US LEC requests conversions from wholesale service to UNEs or UNE combinations. Such charges specifically apply to conversions and are not "associated with establishing a service for the first time." Therefore, BellSouth is not restricted from charging US LEC the "switch-as-is" nonrecurring charge for such conversions. Consistent with its previous finding in Docket 2001-65-C, the Commission should determine that BellSouth is entitled to charge Commission-approved "switch-as-is" rates in these conversion situations.

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Issue A-6: What is the process for asking BellSouth to perform routine network modifications and what charges may BellSouth impose for performing such modifications?

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Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THE DISPUTE UNDER
THIS ISSUE?

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A. The dispute surrounds situations in which BellSouth has not anticipated a requested network modification as being a Routine Network Modification and

requires that the CLEC submit a service inquiry ("SI") before the work is performed. An SI is necessary for BellSouth to evaluate the work request on an individual case basis, and provide a price quote for costs BellSouth must incur, which costs BellSouth has not recovered, either as a separate charge or as part of the cost of the underlying UNE, pursuant to the rates for Routine Network Modification set forth in Exhibit A of Attachment 2. US LEC has objected to BellSouth's requirement for an SI, claiming that it lengthens the provisioning process and improperly adds costs to the provisioning process.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A.

BellSouth will perform Routine Network Modifications in accordance with the FCC's rule that is set forth at 47 C.F.R. 51.319 (a)(8) and (e)(5). Except to the extent expressly provided otherwise in Attachment 2 to the Agreement, if BellSouth has anticipated such Routine Network Modifications and performs them during normal operations and has recovered the costs for performing those modifications through the rates set forth in Exhibit A of Attachment 2, then BellSouth will perform those Routine Network Modifications at no additional charge. Routine Network Modifications will be performed within the intervals established for the UNE and subject to the performance measurements and associated remedies set forth in Attachment 9 to the Agreement to the extent such Routine Network Modifications were anticipated in the setting of those intervals.

Q. AT LINES 182-183 OF HIS DIRECT TESTIMONY, MR. HOFFMAN
STATES "SUCH ADDITIONAL REQUIREMENTS [THAT IS, THE USE
OF THE BFR PROCESS] DELAY THE PROVISIONING OF HIGHCAPACITY FACILITIES." DO YOU AGREE?

A.

No. BellSouth does not propose the use of the Bona Fide Request ("BFR") process, and Mr. Hoffman's testimony leads BellSouth to believe that he simply does not understand the SI process. As opposed to lengthening the process, as claimed by Mr. Hoffman in discussing BFRs, BellSouth proposes the use of the more streamlined SI process. The SI process has shorter intervals (the standard is 10 business days or less) and has the added benefit of allowing BellSouth to look at the specific situation in terms of costs and timeframes, rather than the analysis provided under the BFR process. The SI process actually benefits both parties, because both parties will know and approve the amount of the charges prior to work being commenced.

17 Q. BEGINNING ON LINE 163 OF HIS DIRECT TESTIMONY, MR.
18 HOFFMAN EXPRESSES HIS CONCERN THAT BELLSOUTH MAY
19 SEEK TO USE THE BONA FIDE REQUEST PROCESS FOR
20 RESPONDING TO US LEC'S INQUIRIES REGARDING ROUTINE
21 NETWORK MODIFICATIONS. IS HIS CONCERN JUSTIFIED?

A. No. The BFR process and the SI process have different objectives and timeframes within which the CLECs' inquiries are answered. The BFR process has existed for several years and is useful in determining the feasibility

of a new service or a process that a CLEC proposes, provided that BellSouth has an obligation under the Act to provide the requested service, feature or element. Under the BFR process, the CLEC articulates its request and sends it to BellSouth for analysis. BellSouth's subject matter experts examine the CLEC's request and determine whether it is technically feasible and if so, at what cost and in what time frame. BellSouth responds to the CLEC upon the completion of BellSouth's analysis. and the CLEC then decides and informs BellSouth whether the CLEC wishes to go forward with the request.

The SI process is different in that the question of technical feasibility is not an issue. Rather, what is at issue under the SI process is the associated costs and timeframes required to accommodate the CLEC's request. Because each situation can be unique, BellSouth proposes that the CLEC submit a Service Inquiry, detailing the CLEC's request for a given location. BellSouth personnel will then review the Service Inquiry and provide a response back to the requesting CLEC. If the requesting CLEC deems the charge appropriate and approves such work, then BellSouth will proceed to perform the requested network modification.

Issue A-7: Is BellSouth required to permit commingling of unbundled network
elements or combinations thereof with any service, network or other offering
that BellSouth is obligated to make available only pursuant to Section 271 of
the Act?

Q. WHAT IS COMMINGLING?

A.

In the context of this issue, commingling is the combining of UNEs and combinations of UNEs with wholesale services, such as switched or special access services provided pursuant to tariff. An example of commingling is a CLEC combining a UNE DS0 loop with a tariffed special access DS1 interoffice channel.

8 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Consistent with the FCC's errata to the *Triennial Review Order*, there is no requirement to commingle UNEs or UNE combinations with services, network elements or other offerings made available only pursuant to Section 271 of the Act. To the extent US LEC is asking to commingle UNEs with non-tariffed services provided only pursuant to BellSouth's Section 271 obligations, such commingling is not required by Sections 251 or 252 of the Act and, therefore, such commingling is outside the scope of an Interconnection Agreement. Any such agreement to commingle such a 271 service should be addressed, if at all, by a separate agreement negotiated between the parties.

20 Q. WHAT IS THE BASIS FOR YOUR POSITION?

A. In its original *Triennial Review Order*, at paragraph 584 the FCC stated: "As a final matter, we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including any network elements unbundled pursuant to Section 271 and any services

offered for resale pursuant to Section 251(c)(4) of the Act." However, in its errata released September 17, 2003, the FCC specifically amended paragraph 584 to delete any reference to Section 271. The amended sentence now reads as follows: "As a final matter, we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including any services offered for resale pursuant to Section 251 (c)(4) of the Act."

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In making this change, the FCC correctly noted that there are network elements identified in Section 271 that are no longer subject to Section 251 unbundling requirements. The FCC has clarified that BellSouth is only obligated to permit commingling between UNEs and UNE combinations (subject to 251) and wholesale facilities and services.

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15 Q. ON PAGES 20-21, MS. MONTANO CONTENDS THAT BELLSOUTH IS 16 ATTEMPTING TO "PREVENT US LEC FROM COMBINING 17 WHOLESALE SERVICES PURCHASED FROM THE SPECIAL ACCESS TARIFFS ON THE BASIS THAT SUCH SERVICES, ELEMENTS OR 18 19 OTHER OFFERINGS ARE MADE AVAILABLE ONLY DUE TO BELLSOUTH'S OBLIGATION UNDER 271, AND, THEREFORE, 20 21 BELLSOUTH NEED NOT PERMIT US LEC TO COMMINGLE SUCH SERVICES, ELEMENTS OR OTHER OFFERINGS WITH 251 UNES." IS 22 23 THIS TRUE?

A. Absolutely not. Consistent with the FCC's rules, BellSouth is obligated to allow CLECs to commingle UNEs, or combinations of UNEs, with wholesale facilities or services. Contrary to Ms. Montano's belief, US LEC is not prevented from commingling wholesale services purchased from BellSouth's Special Access tariff with UNEs and UNE combinations provided pursuant to Section 251.

In contrast, if BellSouth is obligated to provide a service, element or other offerings only pursuant to its Section 271 obligations, then such service, element or other offering is not available for commingling. As such, it is not appropriate for the parties' 251/252 interconnection agreement to reference network elements identified in Section 271 that are no longer subject to Section 251 unbundling requirements. For example, non-tariffed 271 wholesale services such as unbundled local switching should not be included in the commingling language of a Section 251/252 agreement.

Issue A-8: Is BellSouth obligated to commingle unbundled network elements or combinations thereof with wholesale services or facilities that are not telecommunications services?

21 Q. WHAT IS BELLSOUTH'S POSITION ON THE ISSUE?

A. The commingling obligation is limited to telecommunications services and should not be more broadly applied to other services, including services over which the Commission has no jurisdiction.

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2 Q. ON PAGE 25, MS. MONTANO CONTENDS THAT, SINCE US LEC IS 3 NOT "FORECLOSED FROM PROVIDING AN ARRAY OF INTEGRATED 4 **TELECOMMUNICATIONS** SERVICES. **ADVANCED** SERVICES, 5 INFORMATION SERVICES, AND OTHER ANCILLARY SERVICES" 6 BELLSOUTH IS SOMEHOW OBLIGATED TO ALLOW US LEC TO 7 COMMINGLE UNES WITH THIS "ARRAY" OF NON-REGULATED 8 SERVICES THAT BELLSOUTH MAY PROVIDE. PLEASE COMMENT.

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A.

Ms. Montano is missing the mark. BellSouth is not attempting to prevent US LEC from using UNEs or combinations of UNEs to provide services to its end users. BellSouth agrees with US LEC that US LEC may use UNEs to provide, consistent with the Act and FCC rules, any additional services, including non-telecommunications. The issue here is whether BellSouth is required to make its non-telecommunications services available for US LEC to commingle with UNEs. The fact that BellSouth's telecommunications services are not wholesale services or facilities over which the Commission or the FCC has jurisdiction to set rates, terms or conditions excludes them from the commingling obligation.

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21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22

23 A. Yes.

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STATE OF SOUTH CAROLINA)	
)	CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)	

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Direct Testimony of Kathy K. Blake in Docket No. 2004-78-C to be served on the following this May 6, 2004:

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